IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 26 of 1988

State of Maharashtra. .... Appellant.

Versus.

1. Chandrakant Patangrao Patil
   age 25 years.
2. Madhukar Shivaji patil,
   age 22 years.
3. Dilip Babasaheb Patil,
   age 23 years.
4. Balyu @ Suryakant Shivaji Patil,
   age 21 years.
5. Baban Ramchandra Patil,
   Age 24 years.
   All residents of Uplavi, Taluka
   Tazgaon, Dist. Sangli. .... Respondents

Shri F.R.Shaikh for the Appellant.

Shri S.V.Marwadi for the Respondents.

CORAM ; SMT.RANJANA DESAI &
ABHAY S.OKA, JJ.

DATED : 6th September, 2004.

JUDGMENT (Per A.S.Oka, J).

1. By this Appeal exception has been taken by the Appellant-State to the Judgment and order dated 21st September 1987 passed by the learned Additional Sessions Judge, Sangli, by which the Respondents Nos.1 to 5 were acquitted of the offences punishable under sections 147,

148, 302 r/w section 149, and 302 r/w 34 of the Indian Penal Code (for short referred to as "the Code"). The Respondent No.2 died during the pendency of the Appeal and his death certificate is placed on record by the learned Counsel appearing for the Respondents. Hence Appeal is abated in so far as the Respondent No.2 (Accused No.2) is concerned.

2. We have heard Shri Shaikh, the learned A.P.P. for the State and Shri S.V.Marwadi for the Respondents.

3. The case of the prosecution is that the Accused/Respondents herein on 12th September 1986 at about 23 hours on the road running between Upalavi to Dhubhgaon about 1 to 1/2 kms. towards southern side of the village Upalavi near the house of Maruti Dattoba Jadhav formed unlawful assembly with common object to commit murder of Tanaji Maruti Kumbhar and in the prosecution of this common object formed unlawful assembly, committed rioting and thus committed offence punishable under section 147 of the said Code. The allegation against the Respondents is that at that time they were armed with sticks, whips etc. which were used as weapons of offence. The further allegation of the prosecution is that the Respondents committed murder of Tanaji by intentionally or knowingly causing bodily

injuries by means of sticks and whip blows thereby committed offence punishable under section 302 read with section 149 of the Code. In the alternative it was alleged that the Respondents committed offence punishable under section 302 read with section 34 of the Code.

4. The case of the prosecution is that the Respondent No.1 i.e. the Accused No.1 is son of Sarpanch of the village Upalavi. The said Sarpanch had four daughters including a daughter by name Nandatai. The accused Nos.2 to 5 are cousins of Accused No.1. The deceased Tanaji had illicit relations with Nandatai i.e. sister of Respondent No.1. On 12th September 1986 at about 9.30 p.m. the Respondent No.5 came to the hut where the deceased Tanaji and his brother Mahadeo were residing and took the deceased Tanaji with him. On that day Ganpati festival was in progress which was being celebrated in the village in the lane known as Mahatma Gandhi Lane. One Sanjay Bapu Shinde (P.W.3) was called by the deceased Tanaji and the Respondent No.5 when the said Sanjay was at the place of Ganpati festival. The deceased Tanaji and Respondent No.5/Accused No.5 came together and met Sanjay. The deceased Tanaji told Sanjay that the motor cycle of Respondent No.5 was in disorder at Dhulgaon Road, near the well of one Landage

Accordingly, the said Sanjay, deceased Tanaji and Accused No.5 went to Dhulgaon Road at about 9.30 p.m. or 10.00 p.m. There was moon light at that time. The motor cycle was not there. Therefore, the Accused No.5 told that they should find out whether the motor cycle was removed to the house. The three of them started proceeding towards the house. When they came near the residential hut of one Maruti Tatoba Jadhav, the other Accused suddenly emerged from the jawar crop. The Accused No.1 was holding a whip and accused No.2 was holding a stick. The Accused Nos.3 and 4 were holding sticks made up of shivari. Thereafter Accused No.1 caught hold of deceased Tanaji and he made deceased Tanaji sit down. The Accused No.1 asked Tanaji whether he had indulged in any misdeed with his sister. The Accused Nos.1 to 5 started beating the deceased Tanaji. The Accused No.1 beat deceased Tanaji with the handle of the whip. The Accused No.2 delivered blows on the person of the deceased Tanaji by using stick. The Accused Nos.3 to 5 also gave blows by using sticks. The said Sanjay requested the accused to allow him to leave. However, Sanjay was threatened by the accused not to leave. According to the prosecution beating was given on the chest, stomach, eyes and as a result of beating Tanaji fell down. Thereafter the deceased Tanaji got up and started running towards the direction of the village

when the Accused Nos.1 to 5 chased him and near the stream near Dhulgaon Road the Accused caught the deceased Tanaji once gain and his hands were tied by ropes. the Accused Nos.1 to 5 again beat Tanaji. Thereafter the hands of Tanaji were released by the Accused. Thereafter, the Accused left the spot with their respective weapons. The case of the prosecution is that the deceased Tanaji was unable to walk and therefore, the said Sanjay brought him on his back to the field of Maruti Ganpati Patil and the said Sanjay kept the deceased Tanaji under a neem tree in the field. On the instruction of the said Tanaji the said Sanjay communicated the incident of assault on the deceased Tanaji to one Sidram Jadhav who was a friend of deceased Tanaji. Accordingly, Sanjay went to the place where the said Sidram and brother of the deceased Mahadevo were watching the cinema in Ganpati festival. The said Sanjay called Sidram out and told him that Tanaji was lying under the tree in the field of Maruti Ganpati Patil.

5. It is the case of the prosecution that thereafter Mahadeo brother of the deceased Tanaji and Sidram brought the deceased Tanaji to the house of Mahadeo. After reaching house of Mahadeo, Tanaji told that the Accused had assaulted him with sticks and handle of whip. Thereafter the deceased Tanaji was to be taken to

the Civil Hospital. However, before Tanaji could be taken to Hospital, he died.

6. The prosecution examined as many as 15 prosecution witnesses. The learned Addl.Sessions Judge, Sangli, found that the Accused were not guilty and were acquitted.

7. The learned A.P.P. Shri Shaikh submitted that the evidence of the eye witness Sanjay could not have been discarded by the learned Sessions Judge when the said witness Sanjay had given a detailed account of the incident. He submitted that the age of the said Sanjay was only 14 to 15 years and there was no reason at all to disbelieve his version. He submitted that the medical evidence on record also supported the prosecution story. He submitted that after reading the entire oral evidence the only conclusion which can be drawn is regarding the guilt of the Accused and no other view or conclusion was possible. He therefore submitted that the Appeal against acquittal deserves to be allowed.

8. Shri Marwadi, the learned Counsel appearing for the Respondents pointed out that the learned Sessons Judge has rightly disbelieved the case of the prosecution. He

submitted that the case of socalled eye witness was also rightly discarded by the learned Sessions Judge. He submitted that the evidence of the eye witness Sanjay was unreliable for the simple reason that at the time of the incident, he was only 14 years of age and was studying in 9th standard and he came out with a story that the deceased Tanaji who was a graduate holding B.Com.degree was his close friend. He submitted that there is no seizure of the shirt of the said witness Sanjay who claims to have carried the deceased Tanaji in his back for a considerable distance when deceased Tanaji had suffered injuries on many parts of his body. He pointed out the number of contradictions in the oral evidence and submitted that no case was made out by the Appellant-prosecution in this appeal against acquittal.

9. We have perused the notes of evidence and the impugned Judgment and Order. We have also gave careful consideration to the submissions made by the learned Counsel appearing for the parties.

10. P.W.3 Sanjay is the only eye witness. At the time of recording deposition his age is stated to be 15 years. Therefore, at the time of the incident, he must be about 14 years of age. He was studying in the 9th standard and was allegedly a close friend of the

deceased Tanaji who had already passed B.Com examination. He stated that one Nandatai was the real sister of accused No.1 Chandrakant and deceased Tanaji was having affair with Nandatai. The Accused Nos.2 and 5 are cousins of Accused No.1 Chandrakant. In the Examination-in-chief the said eye witness has narrated the prosecution case. He has narrated as to how the Accused No.5 and deceased Tanaji met him when he was watching the cinema in the Ganpati festival and was taken to Dhulgaon Road by the Accused No.5 under the pretext that his motor cycle was in disorder. He narrated as to how the deceased was assaulted at two places and as to how he carried deceased Tanaji an his back to the field of Maruti Ganpati Patil.

11. In so far as the evidence of Mahadeo (P.W.No.2) is concerned, he has stated that the Accused No.5 was friend of Tanaji. He has also deposed that Tanaji had relationship with Nandatai and he had admonished his brother Tanaji on that count. His case is that at about 9.30 p.m. to 10.00 p.m. Accused No.5 Baban had come to his house to call Tanaji. When the said Mahadeo came to his house his wife told him that deceased Tanaji had left the house with Accused No.5 Baban. At about 12 O'clock in the night one Sidram Jadhav came when Mahadeo was sitting at Ganesh Festival programme and

informed that his brother Tanaji had expired. He deposed that Tanaji was taken from the field of Maruti Ganpati Patil and was brought to his house when Tanaji narrated the incident. His case is that even before he could be put in a tempo for the purpose taking him to Civil Hospital at Sangli, the said Tanaji died.

12. P.W.No.4 Sidram has also supported the prosecution. He narrated that at about 11 to 11.15 p.m. on the day of incident he was witnessing a cinema show in Ganpati festival when P.W.3 Sanjay came there and informed that the accused had assaulted deceased Tanaji and that the injured Tanaji was kept under a neem tree in the field of Maruti Ganpati Patil. He narrated that he along with one Mahadeo and one Suresh Kumbhar lifted Tanaji and took Tanaji to the house of Mahadeo wherein Tanaji informed his brother Mahadeo about the offence committed by the Accused.

13. The prosecution ha examined one Annasaheb Rangrao Patil, P.W.5, who was Police Patil of the village Manerajuri who was holding the charge of post of Police Patil of village Upalavi. P.W.6 is one Jagannath Tukaram Kale who brought a tempo from its owner Arun Patil to village Upalavi for the purpose of carrying injured Tanaji to Hospital. P.W.1 is one Madhukar

Pandharpure who is the Circle Officer of Manerajuri Circle who drew map of the scene of offence. P.W.7 is the Panch witness Shrirang Patil who was present at the time of inquest of the dead body of Tanaji. P.W.8 is one Harischandra Bhat who was again a panch witness to the recovery of blood stained shirt at the instance of the accused No.5 Baban. P.W.9 Sadashiv Patole is also a panch witness to the alleged recovery of hidden stick at the instance of Accused No.2. P.W.10 Mahadeo Kharmate is again a panch witness to the panchanama recorded by the Police when blood stained cloths of the deceased were seized. Dr.S.N.Patil (P.W.11) is the Doctor who performed the postmortem on the body of deceased Tanaji and who deposed about the injuries on the body of deceased Tanaji. P.W.12 Sambhaji Patil is an Officer attached to the Tasgaon Police Station who recorded first information on telephone. P.W.13 Tippanna Kardas is the Police Sub-Inspector attached to Tasgaon Police Station who carried out investigation of the offence. P.W.14 is Bhivaji Poman a Sub-Inspector attached to the Tasgaon Police Station who was examined to prove the fact that certain articles were forwarded to the Chemical Analyser Pune. He also deposed that one Chit allegedly written by the deceased Tanaji to Nandatai was sent for examination of the hand writing expert. The last witness is P.W.15 one Pandharinath Sarjerao Kumathe

who was working as Police Sub-Inspector at Tasgaon Police Station,and who had submitted the charge sheet in the present case.

14. As far as the eye witness P.W.3 Sanjay is concerned, it is to be borne in mind that he was only 14 years of age at the time of the offence. Admittedly deceased Tanaji had obtained B.Com. decree at that time. Considering the age difference between Sanjay and deceased Tanaji and considering the fact that deceased was holding B.Com. degree and Sanjay was only a student of 9th standard, it is very difficult to accept the story put forward by Sanjay that he was a close friend of the deceased. Sanjay has stated that Ganpati festival was being celebrated in the lane known as Mahatma Gandhi Lane and on the relevant date a movie was being shown in the festival. P.W.4 Sidram who claims to be friend of deceased Tanaji and Sanjay stated that there was a cinema being exhibited on that day at Chawadi. Sanjay who was only a 14 years old boy on the date of incident has stated that after the first assualt Tanaji started running towards the direction of the village when the Accused followed the deceased Tanaji. His version is that he was walking behind the Accused when they were chasing the deceased Tanaji. Even according to his own version when deceased Tanaji had

started running, the accused followed him and it is very difficult to accept that the 14 years of old body will simply walk behind the accused and he will not run away from the place of incident. It is pertinent to note here that according to Sanjay at about 11.00 a.m. he informed Sidram who was watching cinema about the incident. P.W.3 Sanjay thereafter went back to his home and there is no explanation as to why he did not file any complaint. He has stated that at the time of second assault the hands of the deceased were tied with a rope. The evidence of the doctor who performed postmortem clearly shows that there were no injuries caused to the hands of the deceased. It is to be noted that the case of the said witness Sanjay is that he accompanied the deceased, accused No.5 to the site of offence. The said witness Sanjay has stated that he carried Tanaji on his back when injuries sustained by deceased Tanaji were bleeding. Surprisingly the Police has not seized the shirt worn by the said witness Sanjay to show that there were blood stains on his shirt. It is also difficult to accept that a 14 year old boy will carry a grown up person like Tanaji on his back and that also after two violent acts of assault on the deceased.

15. The witness Sanjay has stated that after the first assault on deceased Tanaji, the said Tanaji fell down

and thereafter started running. He stated that the Accused followed deceased Tanaji and thereafter there was the second attack on the deceased Tanaji. If the story of the first assault propounded by the witness Sanjay is to be believed, it is very difficult to accept that the witness Sanjay who was only 14 years of age at that time will follow the accused to the spot where the second assault took place. In the cross-examination he has admitted near the spot of assault there were huts of Hathigerikar and others and he did not make any attempt to solicit help of the said persons.

16. In so far as P.W.4 Sidram is concerned, as stated earlier he is not an eye witness. In the cross-examination he has stated that he along with two others lifted Tanaji who was under the neem tree on the property of Maruti Patil and they brought Tanaji to the house of his brother mahadeo. In the cross-examination he admitted that when Tanaji was lying below the neam tree he saw bleading from the injuries of Tanaji. He stated that though he lifted Tanaji to the house of his brother Mahadeo, there were no blood stains on his person. P.W.7 Shivram who is a panch witness to the inquest panchanama has stated that there were several injuries on the body of the deceased and the clothes on the dead body wee blood stained. Thus the omissions on

the part of the Police to seize the shirt of the witness Sanjay becomes very material. It is also surprising that though P.W.4 Sidram shifted deceased Tanaji from the field and brought him to the house of Mahadeo, there were no blood stains on his body.

17. P.W.13 Tippanna is the panch witness who was present when branch of Shivari tree were attached from the scene of offence. Nothing turns on the evidence of the said witness as well as P.W.No.1, 5, 6, 8, 9, 10, 12 14 & 15 are concerned.

18. The trial Court has disbelieved the evidence of Sanjay on the grounds which are already indicated in the earlier paragraphs. The conduct of the said Sanjay of following the Accused who were running after the deceased, his conduct of not shouting for help after the second assault and his conduct of not soliciting any help though there were huts of the known persons create a serious doubt about the truth of version of Sanjay. As indicated earlier there are other contradictions in his evidence regarding place where the cinema was being exhibited. Sanjay is the only eye witness to the incident and there are more than sufficient reasons to disbelieve his version.

19. The evidence of Dr.Shashikant Dnyandeo Patil, who performed post mortem is also required to be considered. He stated that there were 21 ante mortem injuries on the body of the deceased which were caused by hard subtance like sticks. He gave cause of death as "neuragenic shock due to perforation of intestine and haemorrhagic shock due to subcapsular haemorrhage of liver pueral haemorrhage and extra pleural hematoma". In the cross examiantion he admitted that in neuroginic shock the person collapses and drops down and dies instantaneously. This makes the prosecution story more doubtful. The case made out is that Sanjay carried Tanaji on his back to the field of Maruti and thereafter came to village and called Sidram. Thereafter Sidram and Mahadeo brought the said Tanaji to the house of Mahadeo when Tanaji narrated the incident. The medical evidence creats a serious doubt whether Tanaji was alive for such a long time.

20. The learned Sessions Judge has considered the oral evidence on record and he has analysed the same in the context of the charges framed against the Accused. It is thus clear that the view taken by the learned Sessions Judge is a possible view which can be taken on the basis of the evidence on record. Even assuming that another view is possible to be taken on the basis of the

same evidence, it will not be enough to disturb the Judgment of the learned Sessions Judge. While deciding an appeal from acquittal if the Court comes to the conclusion that two view are possible on the basis of the evidence, the view which favours the Accused has to be accepted.

21. There is no merit in the appeal and the same is dismissed. Bail bond of the accused stands cancelled.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)

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Shri S.V.Marwadi for the Respondents.

**CORAM : SMT.RANJANA DESAI &
ABHAY S.OKA, JJ.**

DATED : 6th September, 2004.

P.C.:

1. For the reasons stated in the Judgment delivered today, the following order is passed:

O R D E R

. There is no merit in the appeal and the same is dismissed. Bail bonds of the Accused stand cancelled.

(SMT.RANJANA DESAI, J.)

(ABHAY S.OKA, J.)